IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.153 of 2001
(Old No.432 of 1986)

Ram Lal, Provident Fund Inspector,
59 Tyagi Road, Dehradun

... Appellant

Versus

1. M/s Makhampur Tea Estate, P.O. IIP, Hardwar, Dehradun through Sri P.S. Jain
2. Sri P.S. Jain, Partner
3. Sri A.D. Mittal, Partner
4. Sri S.C. Jain, Partner
5. Smt. V.Jain W/o N.C. Jain, Partner

Respondent Nos.2 to 5 R/o 870 East Park Karol Bagh, New Delhi

... Respondents

Sri Nandan Arya, learned AGA for the State/appellant

Dated: October 8, 2007

HON. DHARAM VEER, J.

This appeal has been preferred against the judgment and order-dated 8.06.1981 passed by Munsif Magistrate-II, Dehradun in Case No.912 of 1980, Provident Fund Inspector Vs. M/s Mohkampur Tea Estate & four other, whereby the respondents have been acquitted by learned Magistrate.

2. After the transfer of the case from the Allahabad High Court, this Court issued notice to the appellant on 12.6.2003 and in compliance of that order, CJM, Dehradun vide his report dated 21.7.2003 has informed that appellant has died three years back.

3. Thereafter, on 22.7.2007, this Court issued notice to Respondent Nos. 1 to 5 and also summoned the record of the lower court. In compliance of that order, it has been reported that respondent No.1 could not be served due to the reason that no such person is residing there. With regard to Respondent Nos.2 to 5, it has been reported that they have left their address 10 years ago, hence they also could not be served.

4. On 8.6.1981, the date was fixed before the court of Munsif Magistrate-II, Dehradun but the appellant-Provident Fund Inspector was not present in the court and the case was fixed after lunch. However, even after the lunch the appellant was not present yet knowing about the date fixed in the court and the respondents' counsel was present. Hence, the learned Munsif Magistrate-II, Dehradun vide his judgment and order dated 8.6.1981 dismissed the complaint and acquitted the respondents. Being aggrieved by the said judgment and order dated 8.6.1981, the appellant has preferred present appeal.

5. I have heard Sri Nandan Arya, learned AGA for the State/appellant and perused the judgment and order dated 8.6.1981 passed by Munsif Magistrate-II, Dehradun.

6. On 22.05.2007, this Court directed for summoning the lower court record and in compliance of that order, In-charge Officer, Record Room, Dehradun by his report dated 31.8.2007 on the basis of report of In-charge Officer, Record Room, Collectorate, Dehradun has informed that even after doing ample efforts, the record of the case is not traceable. Learned A.G.A. for the State has stated that after passing of the judgment and order dated 08.06.1981, which is under challenge, now the period of 26 years has been expired. He further submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under: -

> ***"Where record has been lost or destroyed as it is not possible to reconstruction the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence. The occurrence had taken place on 15.10.1976 i.e. 15 years back and the complete record has not been reconstructed; Applying the principle laid down in the above mentioned authorities, we are of the opinion that the appeal of Aziz Khan should be allowed and***

his conviction and sentence should be set aside and government appeal against acquittal of accused-respondents is liable to be dismissed."

7. Even otherwise, after perusing the order passed by learned Munsif Magistrate-II, Dehradun, I do not find any illegality or irregularity in the said judgment and other dated 08.06.1981.

8. In view of the above, the appeal is dismissed.

(Dharam Veer, J.)

Rajeev Dang